

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 25 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 90.494)
of the Commission's Rules and)
Regulations Concerning Shared)
Use of 900 MHz Paging Frequencies)

RM-7986

To: The Chief, Private Radio Bureau

REPLY COMMENTS OF PACTEL PAGING

Mark A. Stachiw, Esq.
PacTel Paging
12221 Merit Drive, Suite 800
Dallas, Texas 75251
(214) 458-5200

Carl W. Northrop, Esq.
Bryan, Cave, McPheeters &
McRoberts
700 13th Street, N.W.,
Suite 700
Washington, D.C. 20005
(202) 508-6000

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Summary

Pactel Paging is submitting a reply to the various comments that have been filed in response to the petition for rulemaking of the Association for Private Carrier Paging which seeks rule changes to afford PCP operators a measure of exclusivity protection if they build substantial private systems.

PacTel disagrees with opponents of the proposal who contend that there will be no public interest benefits derived from exclusivity. Congestion and sharing problems in the VHF and UHF bands will be alleviated, and much-needed wide-area paging systems will be encouraged.

Arguments that the proposal will undermine the distinction, or upset the competitive balance, between private and common carrier systems are not well-taken.

Table of Contents

	Page
I. Exclusivity for 900 MHz PCP Channels Will Eliminate Many Problems Plaguing the VHF and UHF PCP Channels.....	2
II. Granting Exclusivity Will Help Satisfy The Need For Wide-area One-way Messaging Spectrum.....	8
III. Conclusion.....	11

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REPLY COMMENTS OF PACTEL PAGING

1. PacTel Paging ("PacTel"), by its attorneys, hereby submits its Reply Comments regarding the Petition for Rulemaking (the "Petition") of the Association for Private Carrier Paging ("APCP") section of the National Association of Business and Educational Radio, Inc. ("NABER") which seeks to amend the Commission's Rules and Regulations concerning the shared use of 900 MHz private carrier paging ("PCP") frequencies.

2. Seven comments were filed regarding APCP's Petition.¹ Two comments were filed which strongly support APCP's Petition, and one comment was filed which partially supports APCP's Petition with respect to local and regional private carrier paging ("PCP") systems.² Four comments were filed opposing

¹ Since the petition was filed by APCP, it reflects the consensus of a large segment of the industry. Many of those who feel that their position was fully expressed by the APCP filing obviously have chosen not to comment. Their silence should be considered by the Commission as support for the proposal.

² Paging Network Inc. ("PageNet") and PacTel (PageNet and PacTel "Supporting Comments") both support APCP's Petition in its entirety. Dial-A-Page filed the partially concurring comment.

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APCP's Petition.³ PacTel feels it is appropriate to respond to some of the issues raised in the Opposing Comments.

I. Exclusivity for 900 MHz PCP Channels Will Eliminate Many Problems Plaguing the VHF and UHF PCP Channels

3. The Opposing Comments argue that exclusivity will not serve the public interest. PacTel disagrees. Exclusivity will relieve the sharing problems that are being arbitrated by the Commission on a regular basis on the VHF and UHF PCP channels, and allow for much-needed regional PCP systems.

4. The Opposing Comments argue that the grant of exclusivity will not cause current and future operators to migrate existing operations on VHF and UHF PCP channels to new systems constructed on 900 MHz PCP channels. PacTel disagrees. As PacTel pointed out in its initial Comments, sharing precludes a licensee from realizing the full rewards of its investment, which can be substantial.⁴ Exclusivity, closely tied to requirements that the licensee actually construct a system, will allow a licensee to realize the full reward of its investment by permitting it to utilize 100% of the capacity of a channel. Indeed, the Commission has recognized that exclusivity will

³ The commentators filing comments in opposition were Mobile Telecommunications Technologies Corp. ("MTel"), Dial Page, Raserco, and Fone Page ("Opposing Comments").

⁴ PacTel Comments at p. 3, fn. 4.

encourage licensees to undertake substantial investment in the band.⁵

5. In addition, contrary to assertions in the Opposing Comments, there is a sufficient number of unassigned 900 MHz PCP frequencies to allow many of the current VHF & UHF PCP operators to relocate to this band. The Opposing Comments focus unduly on the fact that several nationwide channels have already been coordinated and licensed. But, they fail to take into adequate account the fact that most of the 900 MHz PCP channels have not been assigned in the metropolitan areas, and could be used by VHF & UHF PCP licensees to build new systems.⁶ Furthermore, as pointed out in the Supporting Comments, sharing of regional and nationwide channels is highly inefficient because the regional and/or nationwide system may be required to share with several

⁵ See Refarming NOI, 6 FCC Rcd at 4127. See, also, Report and Order, PR Docket 85-102, 58 RR 2d 1290 (1985). In the Refarming NOI, the Commission is utilizing exclusivity as a means to achieve channel efficiency. Exclusivity to PCP licensees would serve the same purpose -- by granting exclusive use of a frequency, the operator has an incentive to undertake investments to increase the amount of revenue possible from the channel. See PageNet Comments at pp. 9-12.

⁶ The Opposing Comments focus on the five nationwide channels currently coordinated, but ignore the thirty-five other channels which are available and are probably not useful for nationwide service because there may already be a licensee entitled to exclusivity in a particular metropolitan area. In addition, most of the Opposing Comments focus on the existing VHF & UHF PCP licensees. Current VHF & UHF licensees are not the only ones that need to have incentives to not locate on VHF & UHF PCP bands. There has been a substantial increase in PCP filings over the last year and, if 900 MHz PCP channels were congested, those new systems may well have been built on existing VHF & UHF PCP channels.

local systems - each of which may demand differing amounts of airtime and prove to be very difficult to coordinate.⁷

6. The Opposing Comments argue that granting exclusivity will result in all forty 900 MHz PCP channels becoming nationwide frequencies. Again, PacTel strongly disagrees. Only a few frequencies have been licensed nationwide⁸; most of the allocated 929-930 Mhz private paging channels have not. If a current licensee is entitled to exclusivity in a particular region or metropolitan area, that frequency would be unavailable to a nationwide applicant in that exclusivity area.⁹ On the other hand, if a current licensee is not entitled to exclusivity, and an applicant filed for a nationwide license on that frequency, the current licensee would not lose any rights.¹⁰

7. PacTel strongly doubts that all 900 MHz PCP frequencies will become nationwide channels any more than the current 900 MHz

⁷ See, e.g., PacTel's Comments at p. 2. See also, PageNet's Comments, at p. 14.

⁸ MTel notes that 5 licenses have been granted nationwide. See MTel Comments at p. 5.

⁹ Of course, if there are more than one licensee on a channel at the time the Commission changes its Rules to grant exclusivity, all the licensees, local, regional, and nationwide would have equal rights with respect to licenses in that market.

¹⁰ The APCP Petition does not address whether a grandfathered licensee could expand service over the licensed frequency if another licensee holds an exclusive nationwide license (subject to the prior use). PacTel submits that grandfathered licensees should be permitted to expand their current systems in the general area of their pre-existing operations so long as the expansion area is served on a simulcast basis with the original system and, thus, does not impose additional sharing obligations.

common carrier channels have become de facto nationwide channels. PacTel estimates that no more than 10 of the PCP channels will become regional channels, and probably no more than 10 would be nationwide channels, leaving 20 channels for local uses.

8. Furthermore, it is always easier to disaggregate channels from a nationwide use to regional uses, than to aggregate a patchwork of allocations into a nationwide system. The Commission should not be particularly worried that 10 channels may be licensed nationwide because the service provided on those channels may in some instances be turned into regional systems if the licensee is unable to construct a nationwide system.

9. The Opposing Comments also argue that granting exclusivity will result in an explosion of speculation on these frequencies. However, there has been no evidence of a "flood" of application similar to the applications filed for 220 MHz.¹¹ The lack of speculation probably results from the high construction threshold standards that apply before a PCP operator earns exclusivity, and because the Commission has avoided establishing a cut-off for the filing of applications.¹² PacTel urges the

¹¹ See, e.g., 220 MHz Applications Number Less Than 60,000, Not 100,000, But Auction Fever Continues, Industrial Communications, June 28, 1992, at 5.

¹² As APCP astutely observed, it is doubtful that a licensee would incur the significant costs to construct and operate a system without any revenue. For example, a nationwide system would cost 6 to 9 million dollars minimum to construct, and monthly site rent would cost an additional 1 million dollars annually. See, APCP Petition at p. 11, fn. (continued...)

Commission to avoid adopting a short filing window which could encourage speculation in this band.¹³ Speculation will be further deterred by the fact that many of the frequencies will not be available for nationwide use because existing qualifying licensees will enjoy exclusivity rights in current service areas.¹⁴ By allowing existing licensees to gain exclusivity based upon prior operations, the Commission will be rewarding bona fide operators rather than speculators whose interest was only generated by rule changes.

10. Furthermore, the Commission should not seek to impose a fixed breakdown between nationwide and regional channels. If the Commission tries to ordain the number of appropriate channels for

¹²(...continued)

20. Another contributing factor to speculation in some services, such as the cellular telephone service, was the fact that the Commission permitted the transfer of bare licenses. PacTel suggests that the Commission impose on exclusive 900 MHz PCP channels the anti-trafficking rules which apply to common carrier licenses.

¹³ See MTel's Comments at p. 8. MTel suggests that another way to deter speculation is to require loading. PacTel believes that such a requirement may prove too difficult for the Commission to administer. Loading would require that the Commission examine every license to determine if the licensee's loading data suggests that the channel is loaded. Furthermore, loading figures can be falsified. PacTel, however, would support a requirement that a licensee could not apply for another license of similar scope in the same area (i.e., another nationwide license while holding one already) without some showing of loading on the existing channel.

¹⁴ In fact, a nationwide license would need New York, Los Angeles, Chicago, Miami, Washington D.C., to name a few cities. These cities will, of course, be the first to run out of frequency.

each category of use, it may later find itself mistaken.¹⁵

APCP's Petition adopts a market driven approach to the assignment of frequencies which makes more sense. The market can best dictate which frequencies, and how many, should be allocated for nationwide, regional, and local service, respectively.¹⁶

11. The Opposing Comments further argue that granting protection to PCP channels would eliminate one of the last distinctions between common carriers and private carriers. But, there is nothing in the statutory definition of Private Radio systems that requires they be licensed only on a shared basis.¹⁷ In fact, it is indisputable that some private radio services, like SMR, enjoy both exclusivity and the ability to serve individuals. It follows that granting exclusivity protection to

¹⁵ For example, the Commission originally broke the 900 MHz spectrum into two separate allocations -- one for private carrier paging for hire and one for self provision. The Commission then later erased the distinction between the two set asides.

¹⁶ The Commission should, of course, ensure that its Rules encourage licensees to make the most efficient use of their spectrum. One method of doing that would be to require digital 1200 baud system architecture as a minimum technical threshold for any system entitled to protection. Furthermore, the Commission should encourage licensees to zone their systems so as to make the most efficient use of the frequency.

¹⁷ Section 332(c)(2) of the Communications Act of 1934 ("Act") provides that PCP operators shall not be deemed common carriers for any purpose under this Act. Section 3 of that same Act defines private service without reference to any requirement that the channels must be shared. Nor does the Act require that private radio licensees serve only businesses, not individuals.

a PCP licensee will not violate the Act, but rather would reflect the evolving view of private carrier status.

12. Notably, common carrier paging services are either deregulated or lightly regulated in most states.¹⁸ In the 30 states where the state regulatory commission has deregulated one-way paging, there are no burdens borne by common carriers that place them at a disadvantage to private carriers. In markets where there is some remaining state regulation of radio common carriers, these operators would be free to convert to private radio channels in the unlikely event that there was a perceived benefit in doing so. In addition, the Commission itself already has eased regulatory burdens for regional paging common carriers by granting a preemption waiver for 931.4375 MHz. Under this combination of circumstances, granting a measure of exclusivity protection to PCP licensees does not threaten to adversely affect the current competitive environment.

II. Granting Exclusivity Will Help Satisfy The Need For Wide-area One-way Messaging Spectrum

13. The Opposing Comments argue that common carrier paging channels which already have been allocated at 931 MHz, and future allocations which may result from the Advance Messaging Service

¹⁸ A survey of state regulation suggests that only 20 states impose any regulation over one-way common carrier paging, and California and Pennsylvania are the only heavily populated states to regulate one-way paging. See "Report on State Regulation of Common Carrier Paging Companies" produced by Telocator.

("AMS") proceeding¹⁹, obviate the need for protection for PCP licensees. PacTel disagrees. Existing common carrier allocations will not satisfy the need for regional or nationwide services. Regional systems require that the major metropolitan areas in the region be served by the system. For example, a northeastern United States system would require coverage in Boston, Philadelphia, New York, Washington D.C., and Newark, N.J. at a minimum.²⁰ However, in that corridor there are no frequencies available. This problem is replicated in almost all large metropolitan markets. Therefore, PacTel fails to see how current common carrier allocations could satisfy the needs of wide-area subscribers. In addition, as PageNet notes, common carrier frequencies do not substitute for PCP channels, even where there are common carrier channels available because the states may have entry regulation which would preclude new entrants.²¹

14. Furthermore, AMS is at the very beginning stage of allocation. No Notice of Proposed Rulemaking has yet been released for AMS. Moreover, there are some indications that the Commission intends to roll the AMS proceeding into the Personal

¹⁹ In the Matter of Requests to Open The 930-931 MHz Paging Reserve Band for Narrowband Data of Paging Services, Emerging Technologies Docket 92-100.

²⁰ As Dial Page notes, there are no wide area 900 MHz common carrier frequencies in Washington D.C. Dial Page Comments at p. 6, fn. 4.

²¹ PageNet Comments at p. 17.

Communications Service ("PCS") docket²². This would further delay any AMS allocation due to the difficult spectrum clearing and coordination issues that are involved in the 1.8 to 2.2 GHz portion of the band which is being looked to as a primary location for PCS. As a result, the allocation of frequencies for and the licensing of AMS may be several years away. If the Commission waits to address PCP exclusivity until after the AMS proceeding has been concluded, the sharing problems on 900 MHz PCP may be as acute as the problems currently existing on VHF & UHF PCP channels.

15. Although new private carrier operations could be part of an AMS allocation at 930 MHz, this is not at all certain. And, at this point, it is not clear what services will be authorized for AMS and what technical requirements may be imposed.²³ To the extent that AMS mandates more stringent technical standards than are required for 929 MHz PCP channels, the services will not be substitutable.

²² In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Service, General Docket No. 90-314.

²³ For example, MTel lays out the AMS proposals. All but the ones advocated by PacTel and Montauk would entail two-way services. Current 900 MHz PCP licenses prohibit two-way transmissions. Furthermore, as Arch Communications Group pointed out in that docket, two-way services entail significantly higher infrastructure costs than current one-way services. Arch Comments at p. 5. In fact, any mobile to base transmission will require an entirely new infrastructure; thus increasing the amount of capital required to build a system. The protection afforded carriers under APCP's Petition is available to carriers of all sizes, whereas the services proposed in AMS may not be available to most PCP licensees.


III. Conclusion

For the reasons specified above, PacTel respectfully requests that APCP's Petition be granted and the Commission expeditiously establish a rulemaking on this matter.

Respectfully submitted,

PACTEL PAGING

By:


Mark A. Stachiw
Carl W. Northrop
Its Attorneys

Mark A. Stachiw, Esq.
PacTel Paging
12221 Merit Drive, Suite 800
Dallas, Texas 75251
(214) 458-5200

Carl W. Northrop, Esq.
Bryan, Cave, McPheeters &
McRoberts
700 13th Street, N.W.,
Suite 700
Washington, D.C. 20005
(202) 508-6000

Dated: June 25, 1992

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CERTIFICATE OF SERVICE

I, Lois L. Trader, hereby certify that on this 25th day of June, 1992, I caused copies of the foregoing REPLY COMMENTS OF PACTEL PAGING to be sent by U.S. first class mail, postage prepaid, to the following:

Michael Cutler
Association for Private Carrier
Paging Section of the National
Association of Business and
Educational Radio, Inc.
1501 Duke Street
Suite 200
Alexandria, Virginia 22314

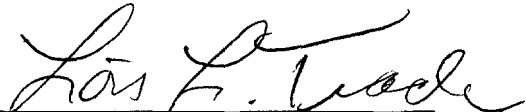
Gerald S. McGowan
George L. Lyon, Jr.
Lukas, McGowan, Nace & Gutierrez,
Chartered
1819 H Street, N.W.
Suite 700
Washington, D.C. 20006

Martin R. Lee
Fone Page, Inc.
5710 Rivers Avenue
P.O. Box 62020
North Charleston, SC 29419

Richard E. Wiley
R. Michael Senkowski
David E. Hilliard
Eric W. DeSilva
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Judith St. Ledger-Roty
Nancy J. Thompson
Lynn E. Shapiro
Kathleen A. Kirby
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Travis Carroll
RASERCO, INC.
923 East Hillsboro
El Dorado, Arkansas 71730


Lois L. Trader